

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT BECKLEY

MIGUEL QUINONES,

Plaintiff,

V.

CIVIL ACTION NO. 5:06-0469

HONORABLE MAGISTRATE JUDGE
R. CLARKE VANDERVORT, Southern
District of West Virginia - Beckley/Bluefield,

Defendant.

FINDINGS AND RECOMMENDATION

Following the filing of his petition for writ of habeas corpus,¹ Miguel Quinones, a state prisoner, filed a petition for writ of mandamus seeking an order requiring the respondent in the habeas case to answer the petition, ordering Magistrate Judge Vandervort's recusal, and granting his motions for injunctive relief and appointment of counsel. At the time he filed his petition for writ of mandamus, plaintiff had neither paid a filing fee on the petition for writ of habeas corpus nor filed an application to proceed in forma pauperis and clearly was not entitled to relief by way of mandamus. Subsequent to the filing of the mandamus petition, plaintiff paid the filing fee in the habeas proceeding. The respondent has been ordered to answer his petition and has filed a response. Similarly, the Court has entered orders on his other motions. Thus, there was not at the time of filing, and is not now, any basis for relief on his petition for writ of mandamus.

¹ The petition was filed in Civil Action No. 5:06-00072.

RECOMMENDATION

On the basis of the foregoing, it is **RESPECTFULLY RECOMMENDED** that the petition for writ of mandamus be denied and that this action be dismissed.

Plaintiff and defendant are hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Thomas E. Johnston, United States District Judge, and that, in accordance with the provisions of Rule 72(b), Fed.R.Civ.P., the parties may, within thirteen days from the date of filing of these Findings and Recommendation, serve and file written objections with the Clerk of this Court identifying the portions of the Findings and Recommendation to which objection is made and the basis for such objection. The Judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made in accordance with the provisions of 28 U.S.C. §636(b) and the parties are advised that failure to file timely objections will result in a waiver of their right to appeal from a judgment of the district court based on such Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Johnston and this Magistrate Judge.

The Clerk is directed to file these Findings and Recommendation and transmit a copy of the same to plaintiff and defendant.

DATED: May 2, 2007


MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE